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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,	)	
	)	18-MJ-03091-TUC (EJM)
Plaintiff,	)	
	)	
vs.	)	<b>REQUEST FOR RECONSIDERATION</b>
	)	<b>AND APPEAL FROM MAGISTRATE</b>
JOSHUA JOEL PRATCHARD,	)	<b>MARKOVICH'S ORDER DETAINING</b>
	)	<b>JOSHUA PRATCHARD</b>
Defendant.	)	
_____	)	

Joshua Pratchard, through counsel, appeals the Order of Detention issued in the above-captioned matter on June 18, 2018 by Magistrate Judge Eric J. Markovich pursuant to the 8<sup>th</sup> Amendment to the United States Constitution and the provisions of the Bail Reform Act, 18 U.S.C § 3142. This appeal is supported by the accompanying Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of June, 2018.

By s/Dan H. Cooper  
Dan H. Cooper

1 **MEMORANDUM OF POINTS OF AUTHORITY**

2 **INTRODUCTION**

3 Joshua Pratchard was arrested on June 1, 2018 and charged with possession of a  
4 firearm by a convicted felon, in violation of 18 U.S.C § 922 (g)(1) and 924 (a)(2) and the  
5 unlicensed sale and transfer of a firearm in violation of 18 U.S.C § 922 (a)(5). At Mr.  
6 Pratchard's initial appearance on June 4, 2018 the government requested a dangerousness  
7 hearing to move that no release condition could ensure the safety of the community. That  
8 hearing was held on June 8, 2018. There was no presumption of detention. However,  
9 Judge Markovich found that Mr. Pratchard is a danger to the community and no  
10 conditions of release can ensure the safety of the community.  
11

12 **FACTS**

13 One witness testified at the dangerousness hearing, FBI agent Ryan McGee. The  
14 facts upon which Magistrate Judge Markovich based his decision are as follows:  
15

- 16 1. Mr. Pratchard was court martialed under the Uniform Code of Military Justice in  
17 2001. He was convicted of four drug offenses and sentenced to three years  
18 imprisonment.
- 19 2. In 2009 Mr. Pratchard was convicted of felony assault in the United States  
20 District Court for Northern California and was sentenced to three years probation.
- 21 3. In 2014 Mr. Pratchard was arrested on a domestic violence involving his wife,  
22 Melissa. The charge was dismissed. Joshua and Melissa Pratchard remain  
23 married. There were no injuries in the case.
- 24 4. Mr. Pratchard submitted an online, public application to a militia group called  
25 Arizona Border Recon. Agent McGee investigates such militias. A confidential

1 informant working with the FBI provided information about Mr. Pratchard, guns  
2 he owned, and his overall demeanor. The informant provided extensive  
3 information about conversations he had with Mr. Pratchard. Those  
4 conversations included discussions about the manufacture of guns, rip crews at  
5 the border, and border surveillance. For reasons that are disputed, Mr. Pratchard  
6 did not join the militia and attended only one “operation.” McGee testified that  
7 based on the conversations with the informant, Mr. Pratchard was willing to sell  
8 weapons. No sale was consummated.

9 5. Firearms were located in Mr. Pratchard’s home following his arrest as well as  
10 ammunition, black powder and a reloading press. These weapons are, in part, the  
11 subject of the felon in possession charge.

12 6. Mr. Pratchard was out and about (“under investigation”) in San Diego from his  
13 initial meeting with the informant in April until his arrest on June 1.

#### 14 **LAW**

15 The decision to support a finding that no condition or combination of conditions  
16 will reasonably ensure the safety of the community must be supported by clear and  
17 convincing evidence. 18 U.S.C § 3142 (f); *United States v. Gebro*, 948 F. 2d 1118, 1121  
18 (9<sup>th</sup> Cir. 1991). Clear and convincing evidence means proof that a particular defendant  
19 actually poses a danger to the community not that the defendant in theory poses a danger.  
20 *United States v. Patriarca*, 948 F 2d 789 (1<sup>st</sup> Cir. 1991).

22 The possession of the guns alone should not constitute clear and convincing  
23 evidence of danger. *United States v. Jeffries*, 679 F. Supp. 1114 (M.D. Ga. 1988). And  
24 the danger of recidivism is “probably not” the type of danger to the community which  
25 will support detention. *United States v. Himler*, 797 F.2d 156 (3d Cir. 1986). In fact,

1 simply being charged with a crime of violence will not satisfy the clear and convincing  
2 standard. *United States v. Chimurenga*, 760 F.2d 400 (2d Cir. 1985).

3 Only in rare circumstances should a person arrested for a non-capital offense be  
4 denied bail. *United States v. Motamedi*, 767 F.2d 1403 (9<sup>th</sup> Cir. 1985). The law mandates  
5 that detention is appropriate only if “no condition or combination of conditions” will  
6 reasonably assure the appearance of the person and the safety of the community. 18  
7 U.S.C § 3142 (e).

### 8 **ARGUMENT**

9  
10 The Magistrate Judges decision to detain Mr. Pratchard was wrong. It was based,  
11 in substantial part, on his prior felony convictions. The convictions were seventeen and  
12 nine years ago respectively. The Magistrate Judge also considered the dismissed charge  
13 of domestic violence from 2014. There was no injury in that case, no conviction and, as  
14 the court knew, the alleged “victim” remains married to Mr. Pratchard and was sitting in  
15 the courtroom throughout the dangerousness hearing. The prior convictions (and prior  
16 allegations) in no way support a clear and convincing conclusion that Mr. Pratchard is  
17 dangerous. *Patriarca, supra*.

18 Furthermore, the Magistrate Judge based his decision on the possession of  
19 firearms, which are elements of the charged offense, which in no way support  
20 dangerousness. *Jeffries, supra*. The possession of the guns upon arrest does not support  
21 clear and convincing evidence of danger.

22  
23 The law mandates that there must be no condition, or combination of conditions,  
24 that will reasonably assure the safety of the community. 18 U.S.C § 3142 (e). In fact,  
25 multiple such conditions exist from home arrest to electronic monitoring to third-party

1 custodians (including Pre-Trial Services). The Magistrate Judge's decision ignores such  
2 options and based his finding of dangerousness on erroneous factors. Being charged with  
3 a crime of violence does not even satisfy the clear and convincing standard and the  
4 charges Joshua Pratchard faces are not dangerous. The Magistrate Judge's decision is  
5 contrary to the facts and the law and should be overturned.

6 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of June, 2018.

7 By s/Dan H. Cooper  
8 Dan H. Cooper  
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